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NO. 86-1817

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ROBERT J. KONDRAT,

Petitioner,

v.

JOSEPH E. O'NEILL, JOSEPH DONOFRIO AND EDWARD A. COX, JUDGES OF THE OHIO COURT OF APPEALS, SEVENTH APPELLATE DISTRICT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does entrapment constitute a defense to a crime or a civil cause of action that may be asserted against a party?

2. Does judicial immunity apply to suits for damages against acts of judges committed within their jurisdiction?

LIST OF PARTIES

The parties to the proceedings below were the petitioner Robert J. Kondrat and the respondents Judges Joseph Donofrio, Edward A. Cox and Joseph E. O'Neill.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES iii
QUESTIONS PRESENTED i
LIST OF PARTIES ii
REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW CORRECTLY DETERMINED THAT ENTRAPMENT IS ONLY A DEFENSE TO A CRIMINAL ACTION 2

II. THE DECISION BELOW CORRECTLY DETERMINED JUDICIAL IMMUNITY IS APPLICABLE TO SUITS FOR DAMAGES AGAINST ACTS OF JUDGES COMMITTED WITHIN THEIR JURISDICTION 4

CONCLUSION 6

TABLE OF AUTHORITIES

CASES **PAGE**

District of Columbia Court of Appeals v. Feldman
460 U.S. 462, 103 S. Ct. 1303 (1983) 3

Stump v. Sparkman
435 U.S. 349, 98 S. Ct. 1099 (1978) 4

United States v. McLernon,
746 F.2d 1098 (6th Cir. 1984) 2

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The respondents, Judges Joseph E. O'Neill, Edward A. Cox, and Joseph Donofrio of the Ohio Court of Appeals, Seventh Appellate District, respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Sixth Circuit's opinion in this case as entered on February 17, 1987.

STATEMENT OF THE CASE

Petitioner has adequately set forth the history of the case now before this Court. Respondents have no corrections, changes, or additions.

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW CORRECTLY DETERMINED THAT ENTRAPMENT IS ONLY A DEFENSE TO A CRIMINAL ACTION.

The first two questions presented by petitioner inquire whether the act of entrapment violates the Fourteenth Amendment to the United States Constitution and whether entrapment is applicable as a defense in a criminal proceeding only. The Sixth Circuit correctly determined both questions when it held that entrapment is not a cause of action in a civil proceeding. Rather it is only a defense to a criminal action. (Pet. A1-A2.)

In so holding the Sixth Circuit reaffirmed its holding in the case of *United States v. McLernon,* 746 F.2d 1098 (6th Cir. 1984). In *McLernon,* the Sixth Circuit discussed entrapment at length and held the following to be a correct statement on the law of entrapment: "where a 'person has no previous intent or no previous purpose to violate the law, but is induced or persuaded by law enforcement agents to commit a crime or agents of a government, he is entitled to the *defense* of unlawful entrapment.'"(Emphasis added.) 746 F.2d at 1109 (quoting *United States v. Thompson,* 366 F.2d 167 (1966)).

Clearly, petitioner was not forced or deceived by respondents to commit a crime nor was he prosecuted for any crime relating to this case for which the defense of entrapment would be applicable. Petitioner contends that entrapment occurred when respondents failed to inform him that court pleadings should be privileged and not released to the news media and then entered judgment against him because he proceeded to so release the pleadings. These facts clearly do not constitute entrapment as defined in *McLernon, supra.*

Since the question of entrapment fails to present an important issue for this Court's review, the question of due process also fails to raise any important issues requiring this Court's attention. Although petitioner asserts he was denied due process because respondents entered judgment against him without informing him that his actions were not in accordance with law, he fails to cite any precedent or authority supporting his contention that this action or the alleged "entrapment" constitutes a denial of due process under the Fourteenth Amendment to the United States Constitution.

Petitioner's assertions would have been better addressed through the appropriate appellate process in the Supreme Court of Ohio. As the Sixth Circuit affirmed, petitioner is requesting this Court and other federal courts to review a state court's decision. This should not be done in this instance. *See District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S. Ct. 1303 (1983).

Since the decision of the Sixth Circuit is well-supported by precedent and petitioner failed to demonstrate any conflict with similar cases in other circuits, respondents submit that the petition for a writ of certiorari should be denied.

II. THE DECISION BELOW CORRECTLY DETERMINED THAT JUDICIAL IMMUNITY IS APPLICABLE TO SUITS FOR DAMAGES AGAINST ACTS OF JUDGES COMMITTED WITHIN THEIR JURISDICTION.

The third question presented by petitioner inquires whether judicial officers who engage in entrapment are protected by judicial immunity. The Sixth Circuit correctly held that judges are absolutely immune from suit for damages for actions taken within their jurisdiction. (Pet. A1-A2.)

In so holding, the Sixth Circuit followed this Court's ruling in *Stump v. Sparkman,* 435 U.S. 349, 98 S. Ct. 1099 (1978), holding that judicial acts, normally performed by a judge before parties dealing with that judge in his judicial capacity, are protected by judicial immunity. Petitioner claims, however, that the respondents engaged in the act of entrapment and therefore their conduct was outside the scope of judicial immunity. Petitioner's continued misinterpretation of the defense of entrapment is again reflected in his argument.

The facts clearly show that respondents affirmed the judgment of the trial court and upheld the decision against petitioner. This action is clearly a function

normally performed by appellate courts and is unquestionably within their jurisdiction. Therefore, judicial immunity is applicable to such action and prohibits petitioner from maintaining a suit for damages against these judicial officers.

Moreover, petitioner fails to cite any authority supporting his reasons in alleging that such actions are beyond the scope of the respondents' jurisdiction. His conclusory statements fail to raise any important question involving judicial immunity that would affect any persons other than himself, or that would require review by this Court.

Since the Sixth Circuit's decision is well-supported and correctly determined, and since petitioner failed to demonstrate any conflict with any other circuit on this question of law, respondents submit that the petition for a writ of certiorari should be denied.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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